

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

Midwest Division – RMC, LLC¹

Employer

and

Kelly E. Pirman

Petitioner

and

**Service Employees International Union HCII,
Missouri/Kansas Division**

Union²

Case 14-RD-274944

DECISION AND DIRECTION OF ELECTION

This case is before me pursuant to a stipulated record entered between the parties on April 20, 2021.³ The parties waived their right to a pre-election hearing and stipulated that the sole issue is whether the election should be conducted in person or by mail ballot, which is a non-litigable matter.⁴ The Board has delegated its discretion in determining such arrangements to Regional Directors. *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). Although election arrangements, including the voting method, are not litigable matters at a pre-election hearing, the positions of the parties were solicited for consideration. The Employer contends that a manual election is appropriate and it is possible to conduct a manual election safely notwithstanding the COVID-19⁵ pandemic circumstances at this time. The Union asserts that a mail ballot election should be held given the current state of the COVID-19 pandemic in Jackson County, Missouri, and particularly Kansas City, where the manual election would be held as well as based on compelling considerations. Petitioner did not submit a position. After carefully considering the arguments made by the parties on this issue in conjunction with the six factors the Board has ordered me to consider in determining whether or not to order a mail ballot

¹ The Employer's name appears as amended by the stipulated record.

² The Union's name appears as amended by the stipulated record.

³ All dates are in 2021, unless otherwise noted. The Employer signed the Stipulation of Record on April 20, the Union signed on April 19, and Petitioner signed on April 16.

⁴ See *Representation-Case Procedures*, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)).

⁵ Throughout this decision, the terms "COVID-19," "COVID," and "Coronavirus" are used interchangeably.

election,⁶ I have determined that a mail ballot election is appropriate under the extraordinary circumstances currently presented by the COVID-19 pandemic.

CONCLUSIONS

Based upon the entire record⁷ in this matter, I conclude as follows:

1. The Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.⁸
2. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
4. There are no contract bars or any further bars in existence that would preclude the Region from processing the petition.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time (including eligible per diem) employees employed by the Employer at its facilities located at 2316 East Meyer Boulevard, and 6601 Rockhill Road, Kansas City, Missouri, in one or more of the following combined units: 1) technical employees; 2) service and maintenance employees; but excluding skilled maintenance employees, managers, guards and supervisors as defined by the Act, confidential employees, physicians, professional employees, nurses and/or clinical educators, or coordinators, clinical nurse specialists, clinical coordinators, case managers/utilization review and/or discharge planners, nurse practitioners, accounting or auditing RNs, infection control/employees health nurses, risk management/performance improvement and/or quality assurance or quality management nurses,

⁶ *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. at 4-8 (November 9, 2020).

⁷ Per the Stipulation of Record, the Employer and Union each submitted a written statement which I have considered. Petitioner did not submit a written statement.

⁸ The parties stipulated that the Employer is a State of Delaware limited liability corporation engaged in the business of providing health care services from its facilities located at 2316 East Meyer Boulevard and 6601 Rockhill Road, Kansas City, Missouri, the only facilities involved herein. During the past year, a representative period, the Employer in the course and conduct of its business operations purchased and received goods and services valued in excess of \$50,000 directly from sources located outside the State of Missouri. The Employer annually derives gross annual revenues in excess of \$1,000,000.

business office clerical employees, employees of outside registries and other agencies supplying labor to the Employer, already represented employees and per diem employees who do not otherwise qualify as regular employees according to the NLRB.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union HCII, Missouri/Kansas Division. For the reasons described below, I have determined that a mail ballot election will be conducted in this matter.

1. Employer Operations

The Employer is an acute care hospital that provides health care services from its facilities located at Meyer Boulevard (Meyer facility)⁹ and Rockhill Road (Rockhill facility)¹⁰ in Kansas City. Per a voter list of employees attached to the Union's written statement, there are approximately 639 employees in the proposed bargaining unit, 24 of whom work at the Rockhill facility and the rest of whom work at the Meyer main campus facility.¹¹ The Employer proposes a single election at the Meyer main campus facility over two consecutive days.¹²

2. Applicable Framework When Considering a Mail Ballot Election

On November 9, 2020, the Board reiterated its longstanding preference for manual elections under *San Diego Gas* while also providing more specific and defined parameters under which Regional Directors should exercise their discretion in determining election type against the backdrop of COVID-19. The Board set forth "six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic," noting that "[w]hen one or more of these situations is present, a Regional Director should consider directing a mail-ballot election" under the extraordinary circumstances presented by the COVID-19 pandemic. *Aspirus Keweenaw*, 370 NLRB slip op. at 1. Those six situations are:

1. The Agency office tasked with conducting the election is operating under "mandatory telework" status;

⁹ Also referenced as the main campus.

¹⁰ Also referenced as the Brookside campus.

¹¹ Petitioner's petition lists 693 employees in the unit and the Union's written statement provides an average of approximately 650 employees in the unit.

¹² The Employer proposes polling times of 5:00 to 9:00 a.m., 2:00 to 4:00 p.m., and 10:00 p.m. to midnight for each day.

2. Either the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The employer fails or refuses to commit to abide by the GC Memo 20-10 protocols;¹³
5. There is a current Covid-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and
6. Other similarly compelling considerations.

Accordingly, I analyze the instant petition using the prevailing circumstances in the state and county where the facility is located and in light of the Board's recent guidance in *Aspirus*.

3. Facts Related to the Six Factors

(1) The telework status of the Region's offices

As the Board in *Aspirus* acknowledged, all regional offices (including subregional and resident offices) have been on permissive, rather than mandatory, telework since mid-June 2020.

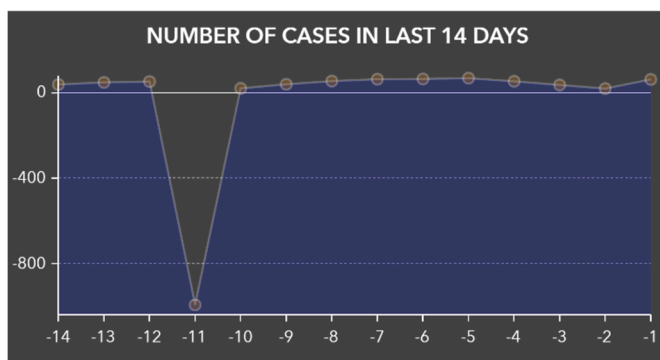
(2) The 14-day trends for increasing cases and the positivity rate

The Board suggests Regional Directors consider the 14-day trend in the number of new cases of COVID-19 and the 14-day testing positivity rate in the area around the Employer's facility.

In *Aspirus*, the Board does not specifically detail how the 14-day trend in the number of new cases should be evaluated. The Board does direct that county-level data for the potential manual polling place for the 14-day trend should be accessed through the "Coronavirus Resource Center" website maintained by Johns Hopkins University. 370 NLRB slip op. at 5, fn. 22. The City of Kansas City, where the Employer's facilities are located, is in Jackson County, Missouri. As of April 27, the Johns Hopkins "COVID-19 Status Report" for Jackson County showed the following trend:¹⁴

¹³ July 6, 2020, General Counsel Memorandum 20-10, "Suggested Manual Election Protocols" (GC Memo 20-10). See also, GC Memo 21-01, dated November 10, 2020, stating "[a]side from elements set forth in GC Memo 20-10, upon which the *Aspirus Keweenaw* Board relies in part, the instructions set forth in this memorandum supersede all other instructions on the subject."

¹⁴ <https://bao.arcgis.com/covid-19/jhu/county/29095.html> (accessed April 28).



Date	Johns Hopkins – Jackson County (including KC)
April 14	38
April 15	48
April 16	52
April 17	-995 ¹⁵
April 18	20
April 19	39
April 20	54
April 21	63
April 22	64
April 23	68
April 24	53
April 25	36
April 26	19
April 27	62

The State of Missouri also reports COVID-19 cases by county and its most recent data for Jackson County shows a steady decline in COVID infections (from 48 new cases on April 19 to 16 new cases on April 25). However, the State’s data does not factor in the population of Kansas City which maintains its own public health authority and tracks and reports its tests, cases and deaths separately.¹⁶ Likewise, while Jackson County itself reports COVID-19 data, it only includes Eastern Jackson County which excludes Kansas City. Finally, the most recent data from the COVID-19 dashboard maintained by Kansas City that the number of weekly confirmed

¹⁵ Without explanation, the Johns Hopkins data, reports -995 cases in Jackson County on April 17 – I do not factor this one-day data into my analysis regarding the 14-day trend.

¹⁶ <https://showmestrong.mo.gov/data/public-health/data-methodology-and-documentation/> (accessed April 28).

positive cases increased from 171 cases during week of April 4 to 214 cases during week of April 11.¹⁷

As further noted by the Board in *Aspirus* with regard to the second factor, the 14-day “percent positive” or “testing positivity rate” statistic is “based on the number of positive and total tests in the locality” and is “suggestive of transmission rates in the locality among people who have not been tested.” *Aspirus*, 370 NLRB slip op. at 5. Johns Hopkins University notes that “[b]ecause a high percentage of positive tests suggests high coronavirus infection rates (due to high transmission in the community), a high percent positive can indicate it may be a good time to add restrictions to slow the spread of disease.”¹⁸ On May 12, 2020, the World Health Organization (WHO) advised governments that before reopening, testing positivity rates should remain at five percent or lower for at least 14 days,¹⁹ and the Board has decided to use this five percent standard in analyzing the appropriateness of a mail ballot versus manual election. State-by-state statistics for 14-day testing positivity rates reported by Johns Hopkins (“Which U.S. States Meet WHO Recommended Testing Criteria?”) show that as of April 27, the State of Missouri has a positivity rate of 4.36 percent, 0.64 percent below the recommended rate.²⁰ While Johns Hopkins reports county-level statistics for 14-day trends in the number of new confirmed cases, as noted above, it does not report statistics for 14-day testing positivity rates on a county-by-county basis. However, the State of Missouri reports county-by-county positivity rates on a weekly basis – for the period from April 19 through April 25, the seven-day positivity rate reported by the state for Jackson County was 5.6 percent, up 1.0 percent in the preceding seven-day period.²¹ Additionally, the current 14-day percent positive rate reported directly by Jackson County is 5.66 percent while the percent positive per week rate is reported significantly higher at 6.1 percent as of week of April 18, with weekly increases since week of March 21.²²

(3) Mandatory health orders related to maximum gathering size

On March 26, Governor Mike Parson issued Executive Order 21-07 (extending previous Executive Order 20-19, issued November 19, 2020) extending the State’s public health emergency to August 31, 2020, noting that “COVID-19 continues to pose a serious health risk for the citizens of the State of Missouri.”²³ The previous statewide “Public Health Warning,” issued with Executive Order 20-19, advising that the State would take a “balanced approach” to

¹⁷ <https://kcmo.maps.arcgis.com/apps/dashboards/a9cb1fa166aa44de99dab0b946b08799> (accessed April 28).

¹⁸ <https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html>. (accessed April 28).

¹⁹ <https://coronavirus.jhu.edu/testing/testing-positivity> (accessed April 28).

²⁰ *Id.*

²¹ <https://showmestrong.mo.gov/data/public-health/county/> (using CDC method) (accessed April 28).

²² <https://jacohd.org/data-dashboard/> (accessed April 28).

²³ “Governor Parson Signs Executive Order 21-07 Extending State of Emergency in Missouri.” <https://governor.mo.gov/press-releases/archive/governor-parson-signs-executive-order-21-07-extending-state-emergency>. To view Executive Order 21-07, [click here](#). (accessed April 28).

Missouri's COVID-19 response and setting forth advisories for personal behavior, business, travel, and local government, remains in effect. These advisories make specific recommendations with regard to mask-wearing; social distancing; handwashing; limiting large gathering interactions and travel outside the state; staying home when sick; and modifying physical workspaces and developing disease response plans in workplaces. The State recommends that all residents wear a cloth face covering when in a public setting where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), especially in areas of significant community-based transmission.²⁴ The COVID-response state policies give leeway to counties and cities to put in place stricter restrictions against the virus. A revised COVID-19 emergency order is set to take effect on April 30 in Kansas City which removes capacity limits and scales back the mask requirement in some instances. Under the new order, masks are no longer required outdoors, or in private indoor spaces where social distancing of at least six feet can be maintained. However, masks are still required in all indoor spaces of public accommodation.²⁵

(4) Employer's position on procedures in GC Memo 20-10

With regard to the fourth situation, the Employer agrees to commit to abide by the GC Memo 20-10 protocols.

(5) COVID-19 in the Employer's facility

The Employer has not certified, by affidavit, its COVID-19 status at its Kansas City facilities. However, the Employer states in its written statement that "in the last three months, 42 employees have tested positive for COVID-19." As noted, the Employer agrees to abide by GC Memo 20-10, which provides employers will certify any changes to COVID-19 status at the facilities in question after a manual election is directed, up to the day of the election itself. The Employer further states that "it is almost a certainty that there will be COVID-19 positive patients at the [election site] facility at the time of required disclosure...."

(6) Other compelling considerations

The Union argues that an additional compelling consideration exists regarding the emergence of COVID-19 variants in the area. The Union argues that requiring employees to vote in person under these conditions would result in a significant and direct risk of disenfranchisement.

²⁴ <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/statewide-orders.php> (accessed April 28).

²⁵ <https://www.kcmo.gov/city-hall/departments/health/coronavirus-covid-19-kcmo-information-and-response/reopen> – See, [updated Order](#) which will take effect at 12:01 a.m. on Friday, April 30, 2021 and will remain in effect until May 28, 2021, unless modified or rescinded before that date. (accessed April 28)

4. Union and Employer Positions

The Union asserts that a mail ballot election should be held given the current state of the COVID-19 pandemic in Jackson County, Missouri, and particularly Kansas City, where a manual election would be held. In this regard, the Union contends that the second factor cited by the Board in its recent *Aspirus* decision and order, related to the 14-day trend in the number of new confirmed COVID cases as well as the 14-day testing positivity rate in the county, is easily satisfied in this case. The Union additionally contends that given the emergence of COVID-19 variants in the area, requiring employees to vote in person under such conditions would result in a significant and direct risk of disenfranchisement.

While acknowledging an increasing seven-day test positivity rate (for the seven-day period ending April 19) of 5.6 percent, the Employer asserts that a manual election at its main campus Meyer facility in Kansas City would be safe in light of its enhanced safety precautions which have been in place for over a year to protect employees, patients and visitors from risks related to COVID-19. Such safety precautions include visitor screening with limited access to the hospital for those with a fever or coronavirus symptoms. The Employer also highlights that it is possible to conduct a manual election safely at this time by following the safety precautions set forth in GC Memo 20-10. Despite the large size of the 600-plus-employee petitioned-for unit, the Employer asserts that it has several options for a safe in-person election including its sizeable first floor conference space or its basement meeting room, each with no COVID patients on the floor. As an alternative, the Employer also proposes an outdoor tented area in the parking lot area surrounding the hospital. The Employer asserts that all of these options offer sizable voting spaces with separate entrances and exits, as well as a favorable ventilation system and ease of ability to stay within state and local COVID restrictions and recommendations and will allow for safe voting at its Meyer facility. Specifically, the Employer states it would comply with setting up the voting area to allow for social distancing and limited contact between individuals; a staggered releasing schedule; and all other specific requirements set forth in GC Memo 20-10. The Employer further acknowledges that 42 employees have tested positive for COVID in the past three months and that even though it is “almost a certainty that there will be COVID-19 positive patients at the facility at the time of the required disclosure,” an election can be held safely at the Meyer facility.

5. Analysis of the Six Factors in *Aspirus*

There are no issues with regard to the first, third and fourth factors – the Region’s offices are not operating under a mandatory telework policy; the proposed manual election sites do not appear to violate any health orders relating to maximum gathering size; and the Employer agrees to commit to abide by the GC Memo 20-10 protocols.

Regarding the second factor, as noted, data from the state and county COVID dashboards do not factor in the Kansas City population. The Johns Hopkins data (including Kansas City), which the Board recommends I use for accessing and analyzing the 14-day trend in the county, indicates that the 14-day trend in the number of new confirmed cases in Jackson County has fluctuated from 38 on April 14 to 62 on April 27, with a daily high 68 on April 23. These

numbers are concerning in that they show an initial three-day upward trajectory followed by a slight decrease in cases and then another five-day surge from April 19 to April 24. Further, there is a notable increase from 19 new cases on April 26 to 62 new cases on April 27. This Johns Hopkins data, in conjunction with the most recent data from the Kansas City COVID dashboard showing an increase in the number of weekly confirmed positive cases from 171 during week of April 4 to 214 during week of April 11, demonstrate an overall increasing trend in new cases which is concerning and supports the propriety of a mail ballot election.

There is even stronger current evidence of ongoing COVID-19 infections in Jackson County based on positivity rates reported, as explained above. The testing positivity rates remain impermissibly high by state as well as county standards. Most concerning is the current 14-day percent positive rate of 5.66 percent reported directly by Jackson County, as well as the significantly higher 6.1 percent positive per week rate as of week of April 18, with weekly increases since week of March 21. Additionally, the State's reported seven-day positivity rate of 5.6 percent for Jackson county is up 1.0 percent compared to the preceding seven-day period. These statistics are sufficient to meet the second situation enunciated by the Board in *Aspirus* and establish that there is current evidence of widespread COVID-19 infection in the communities surrounding the Employer's facility with no seen improvement in COVID conditions.

Overall, I find this evidence is sufficient to meet the second factor of the Board's guidance for when a mail-ballot election should be considered and leads me to conclude there is too much risk to holding a manual election at this time or in the near future.

Regarding the fifth factor and the current COVID-19 status at the Employer's facility, the Employer acknowledges that the applicable legal standard regarding manual versus mail ballot elections during the COVID-19 pandemic is outlined in *Aspirus* in which the Board stated:

...for the duration of the pandemic, we require that in all cases where a party requests a manual election, the employer shall certify, *by affidavit*, as part of its submission regarding election arrangements, how many individuals present in the facility within the preceding 14 days have tested positive for COVID-19 (or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days). The Employer must also supplement its initial submission and certify any changes to the facility's COVID-19 status after a manual election is directed, up to the day of the election itself. Based on these certifications, the determination that there is a COVID-19 outbreak at the employer's facility or the employer's failure or refusal to provide the required certifications will ordinarily indicate the propriety of a mail ballot election. 370 NLRB slip op. at 7 (emphasis added).

In *Aspirus*, the Board recognized that a "current Covid-19 outbreak" at the facility where the manual election would occur poses potential health and safety issues for everyone who participates in the election. *Aspirus*, slip op. at 7. Recently, in *Rush University Medical Center*, 370 NLRB No. 115, slip op. at 1 (April 27, 2021), the Board clarified that "the *Aspirus* current outbreak factor is not satisfied [merely] by evidence that Covid-19 is present at a facility." The

Board in *Rush* found that “[i]nstead, the Regional Director should determine whether the Covid-19 cases at the facility would reasonably be expected to affect the conduct of a manual election. Relevant considerations in this regard include whether (1) the number or physical location of such Covid-19 cases, or the likelihood that those cases will result in unit employees being exposed to Covid-19, indicates that a manual election would pose a threat to health or safety; or (2) current Covid-19 cases among unit employees would result in their disenfranchisement by a manual election.” *Id.* at 1-2.

Initially, I find that while the Employer has not certified, by affidavit, its COVID-19 status at the proposed election site at the Meyer facility, it has stated in its written statement that 42 employees have tested positive for COVID in the past three months²⁶ and that it is “almost a certainty that there will be COVID-19 positive patients at the facility at the time of the required disclosure.” The Employer further agrees to abide by GC Memo 20-10, which provides employers will certify any changes to COVID-19 status at the facility in question after a manual election is directed, up to the day of the election itself. Further, I find that the Employer’s acknowledgment that 42 of its employees have tested positive for COVID in the last three months, while representing less than one percent of the unit employees, is concerning. In this regard, I am mindful of the swift pace at which the coronavirus spreads from infected individuals leading me to conclude that the safest way to limit the spread of the virus is to avoid in-person contact. I am also concerned that the current COVID-19 cases among unit employees would cause them to refrain from participating in a manual election. If an employee tests positive for COVID-19, suspects they may have COVID-19 due to symptoms, has an elevated temperature, or must be quarantined due to COVID-19 exposure, they will be deprived of their vote in a manual election, as there is no absentee ballot or remote voting options under the Board’s manual election rules. I find that a mail ballot election avoids this significant pitfall and ensures all have an opportunity to vote regardless of their exposure to COVID-19 or health status while protecting the safety and health of employees at the Employer’s facilities. Overall, while I find these factors relevant and concerning, my decision to order a mail ballot election is based primarily on the Board’s second factor as noted above.

Finally, I consider the sixth factor and compelling consideration raised by the Union. The Union argues that given the emergence of COVID-19 variants in the area, requiring employees to vote in person under these conditions, will result in a significant and direct risk of disenfranchisement. The Board considered this factor most recently in *Rush*, supra, finding that “no changes in prevention strategies have been recommended by the CDC based on [COVID-19] variants currently in circulation. Such changes are only recommended for ‘variants of high consequence,’ and no such variants have been identified by the CDC to date.” *Id.* at 2. The *Rush* Board concluded that “the CDC’s determination that new variants exist does not, as of this date, constitute a “similarly compelling circumstance” within the meaning of *Aspirus* factor 6.” Based on the Board’s findings in *Rush*, I do not consider this compelling consideration raised by the Union in making my decision to order a mail-ballot election.

²⁶ The Employer does not provide a breakdown of the specific work locations of the 42 employees.

Given the above conditions, I find the appropriate and most responsible measure to ensure a safe election is a mail-ballot election. A mail-ballot election will eliminate the risk of further infection and the risk of unnecessarily exposing employees, Board agents, party representatives, and their families to COVID-19, and it will ensure that the unit employees have the opportunity to vote promptly.

ELECTION DETAILS

I have determined that the election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate voting group at 3:00 p.m. on **Monday, May 17, 2021**, by personnel of the National Labor Relations Board, Region 14, from the office of the National Labor Relations Board, Subregion 17 – 8600 Farley Street – Suite 100, Overland Park, Kansas 66212-4677. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Monday, May 31, 2021**, or otherwise requires a duplicate mail ballot kit, should communicate immediately with the National Labor Relations Board by calling the Subregion 17 Office at (913) 275-6525.

The ballots will be commingled and counted by the Subregion 17 office at 2:00 p.m. on **Monday, June 14, 2021**. In order to be valid and counted, the returned ballots must be received by the Subregion 17 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which will be held by videoconference. A meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

VOTING ELIGIBILITY

Eligible to vote are those in the unit who were employed during the bi-weekly payroll period ending **April 17, 2021** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as directed above.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

VOTER LIST

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellphone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Monday, May 3, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

POSTING OF NOTICES OF ELECTION

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to

12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

DATED at Overland Park, Kansas, this 29th day of April 2021.



William B. Cowen, Acting Regional Director
National Labor Relations Board, Region 14/Subregion 17
8600 Farley Street, Suite 100
Overland Park, Kansas 66212-4677